

REMARKS

Claims 1 – 26 remain in the application and stand rejected. Claims 16 and 22 – 26 are amended herein. Although this Response is being timely filed, the Commissioner is further authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 50-3818.

The MPEP provides in pertinent part “the examiner should always look for enabled, allowable subject matter and communicate to applicant what that subject matter is at the earliest point possible in the prosecution of the application.” MPEP §2164.04 (emphasis original).

Claims 16 – 26 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter, i.e. for reciting non-transitory media. Office Action, #3, pages 3 – 4. Applicants aver that the media cannot be transitory and still store something, as the claims recite. Be that as it may, however, while the applicant continues to believe that, as rejected, claims 16 – 26 are directed to statutory subject matter, the claims are amended to recite “non-transitory” as suggested by the Office action. *Id.* Reconsideration and withdrawal of the rejection of claims 16 – 26 under 35 U.S.C. §101 is respectfully requested.

Claims 1 – 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,484,033 to Murray and U.S. Patent No. 7,039,420 to Koskinen et al. in combination with published U.S. Patent application No. 2005/0198265 to Veprek, alone, or further in combination with U.S. Patent No. 6,167,122 to Titmuss. The rejection is respectfully traversed.

Applicant notes that Veprek has a January 30, 2004 filing date, filed two (2) months prior to the present application. Provided herewith is an Affidavit under 37 C.F.R. §1.131, establishing an invention date for the present invention prior to Veprek. Therefore, applicant has established that Veprek is not a reference against the present application. Therefore, having removed Veprek as a reference, the present invention is patentable over all references of record. Reconsideration and withdrawal of the rejection of claims 1 – 26 under 35 U.S.C. §103(a) is respectfully requested.

The applicant thanks the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance for the reasons set forth above, the applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1 – 26 under 35 U.S.C. §§101 and 103(a) and allow the application to issue.

As previously noted, MPEP §706 “Rejection of Claims,” subsection III, “PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED” provides in pertinent part that

If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration**.

(emphasis added.) The applicant continues to believe that the written description of the present application is quite different than and not suggest by any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below for a telephonic or personal interview to discuss any other changes.

Respectfully submitted,

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